LABOUR RELATIONS BOARD

Newfoundland and Labrador

2001 ANNUAL REPORT

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MESSAGE FROM THE CHAIRPERSON

I am pleased to present the 2001 annual report on the activities of the Labour Relations Board. This was the 52nd year of operation of the Board and this is my third report since been appointed as Chairperson.

On April 1, 2001, the Province of Newfoundland and Labrador became one of eight provinces in Canada to have a full-time Chairperson. The Board otherwise maintained its part-time structure of Vice-Chairpersons and Board members in numbers equally representative of employees and employers. Moreover, the Board is supported by full-time professional staff with significant experience in administering the legislation.

On June 21, 2001, the Board convened a roundtable discussion of stakeholders with a view to eliciting input directed at improving the operations of the Board. From all accounts, the roundtable was successful with input from employee and employer representatives as well as solicitors giving rise to the introduction of rules and policies relating to matters such as disclosure of officer's reports; scheduling of hearings; and processing of applications, replies and interventions. Moreover, the Board anticipates that the foregoing changes will provide greater efficiency, fairness and certainty in the processing of applications before the Board.

In the coming months, the Board will continue to work closely with employees, unions and employers in developing responses to new challenges and opportunities. More particularly, the Board wishes to explore with stakeholders the potential for facilitating settlement of complaints and decreasing reliance on more formal adjudicative processes.

Morgan Cooper

Morgan Cooper
Chairperson
Labour Relations Board

INTRODUCTORY COMMENTS

The Labour Relations Board is an independent, quasi-judicial tribunal, which is established under the provisions of the Labour Relations Act, R.S.N. 1990, c L-1. It mediates and adjudicates a wide variety of disputes under a number of different statutes, including:

- Labour Relations Act
- Public Service Collective Bargaining Act
- Fishing Industry Collective Bargaining Act
- Teachers Collective Bargaining Act
- Interns and Residents Collective Bargaining Act
- Occupational Health and Safety Act

The Labour Relations Act contains provisions outlining the labour relations rights and responsibilities of employers, trade unions and employees. The Act guarantees employees the right to seek collective bargaining with their employers and establishes a framework for employees to make this choice freely.

The Act confers on the Board the authority over many important aspects of labour relations, including the certification of unions to represent employees, the revocation of certification upon application by an interested party or parties in cases where certified unions no longer have the support of a majority of the bargaining unit members, unfair labour practices, successor rights determinations and imposition of first collective agreements.

Under the Labour Relations Act, the Board has the exclusive jurisdiction to exercise the power conferred upon it and to determine all questions of fact or law that arise. Its decisions are not subject to appeal and a privative clause in the Act limits the scope of judicial review. The Board has the power to reconsider any of its decisions. It is also entitled to determine its own practices and procedures, and to make rules prescribing the procedures to be followed in respect of the administrative functions of the Board. These Rules of Procedure include, for example, provisions for determining a member in good standing of a trade union or association; enlarging or abridging time; and the responsibilities of the Chief Executive Officer and the Secretary of the Board.

Under the Public Service Collective Bargaining Act, the Board is also responsible for the issuing of orders declaring certain employees within a bargaining unit or bargaining units to be essential employees for the health, safety or security of the public.

The Board consists of five regular members; two representatives of employers, two representatives of employees and an independent chairperson. The personnel who served as regular members on the Board during 2001 were Max Taylor and Madonna Moss, representing employers; William Parsons and David Wade, representing employees. Morgan Cooper served as Chairperson of the Board during the reporting period.

The Board is also composed of three Vice-Chairpersons and eight alternate members, four representatives of employers and four representatives of employees, who serve on the Board in the absence of regular members. During the year under review, James Oakley, Catherine Allen-Westby and Gerald O'Brien served as Vice-Chairpersons. William Alcock, Scott Wells, David Porter and John Peddle served as alternate employer representatives; and Raymond Reid, David Curtis, Jenesta Holloway and Diane Jacque served as alternate employee representatives.

The administrative duties and functions of the Board are supervised by the Chief Executive Officer with the aid of the Secretary. During 2001, Joe Noel was the Chief Executive Officer.

The Board offices are located in the Beothuck Building, Crosbie Place, St. John's, with hearings held throughout the province. The full-time staff of the Board consists of six persons which include the Chief Executive Officer, three Investigating Officers, Clerk-Stenographer and Clerk-Typist.

During the year, there were a total of 163 new applications filed with the Board. 113 applications were carried forward from the previous year and the Board processed 155 applications during the period. The Board held 167 days of meetings, including hearing dates. A total of 22 hearings were held by the Board.

The Reasons for Decision issued by the Board during 2001 have been compiled in a separate publication and are available from the Board offices. For a listing of the Reasons issued, see pages 22-23 of this report. The full text of Board decisions is available on Quick Law.

Descriptions of bargaining units certified by the Board in 2001 are shown on pages 24-29.

The mailing address for the Labour Relations Board is P. O. Box 8700, St. John's, NF A1B 4J6. Telephone (709) 729-2707 Facsimile (709) 729-5738

■ *MEMBERS OF THE BOARD*

During the year under review, the Board consisted of the following members.

MORGAN COOPER, *Chairperson*

Morgan Cooper's educational achievements include a Bachelor of Commerce (Hons.) degree from Memorial University of Newfoundland, Master of Industrial Relations degree from University of Toronto and Bachelor of Laws degree from Dalhousie University. He lectures in subjects of industrial relations and law at Memorial University of Newfoundland. Prior to assuming his present position as full-time Chairperson of the Board, Morgan served as a labour arbitrator and led a variety of provincial labour relations initiatives. In 1997, Mr. Cooper was retained by the provincial government to consult with industry and labour stakeholders and to make recommendations for a labour relations framework for offshore oil and gas production platforms. His report became the basis for legislative reforms introduced in the House of Assembly in December, 1997. In 2000, Mr. Cooper was retained by the provincial government to consult with industry and labour stakeholders and to make recommendations to facilitate stability on major construction and offshore oil and gas fabrication projects. The report gave rise to legislative amendments introduced in the House of Assembly in April, 2001.

JAMES C. OAKLEY, *Vice-Chairperson*

James Oakley obtained his Bachelor of Arts degree from the University of Alberta, Bachelor of Education degree from Memorial University and Bachelor of Laws degree from the University of Western Ontario. He has been a member of the Law Society of Newfoundland since April, 1980. He has been a member of the Panel of Arbitrators as approved by the Labour Management Cooperation Committee since 1986 and has also been selected by unions and employers to panels of arbitrators named in collective agreements. Mr. Oakley is a member of both the National Academy of Arbitrators and the Canadian Industrial Relations Association. He is a Chartered Arbitrator, designated by the Arbitration and Mediation Institute of Canada.

Mr. Oakley was appointed to the position of Vice-Chairperson of the Labour Relations Board in November 1999, having previously served as Vice-Chairperson from 1991 - 1998.

GERALD O'BRIEN, Q.C., *Vice-Chairperson*

Gerald O'Brien received his Bachelor of Arts (Hons) from Memorial University of Newfoundland in 1963 and a Bachelor of Education from there in 1964; he received his Bachelor of Laws Degree from Queen's University in 1968. He has been a member of the Law Society of Newfoundland since 1969 and was appointed a Queen's Counsel in 1988.

Mr. O'Brien has practised law since 1969 in St. John's, and during that practice has dealt extensively in Labour Law representing both unions and employers. He was appointed Vice-Chairperson of the Labour Relations Board in April, 1999 for a 5-year term.

CATHERINE A. ALLEN-WESTBY, *Vice-Chairperson*

Catherine A. Allen-Westby received her Bachelor of Nursing Degree from Dalhousie University in 1982 and Bachelor of Laws Degree from the University of Ottawa in 1985. She has been a member of the Law Society of Newfoundland since 1986. Ms. Allen-Westby worked as a Crown Attorney with the Department of Justice for a one year period. She has been carrying on a general law practice in Corner Brook since 1987. Ms. Allen-Westby was a Vice-Chairperson of the Workers' Compensation Appeal Division, formerly known as the Workers' Compensation Appeal Tribunal from 1989 to 1998.

Ms. Allen-Westby was appointed to the position of Vice-Chairperson of the Labour Relations Board in June, 2000 for a 5-year term.

MADONNA MOSS, *Employer Representative (Regular)*

Madonna Moss has been involved in the fishing industry since 1986, and has been a director of Happy Adventure Sea Products (1991) Limited since 1991. She served on the Board of Directors, as Director-at-Large for the Resource Sector, of the Newfoundland and Labrador Employers' Council from 1993 to 1995. She is currently an active member of Council and sits on the Labour Policy Committee.

Ms. Moss was appointed to the Labour Relations Board as an alternate employer representative in 1993, and was reappointed as a regular employer representative in December 1995, January 1998 and January 2000 for 2-year terms.

MAX TAYLOR, *Employer Representative (Regular)*

Max Taylor spent 15 years as a school board administrator and has been heavily involved in community life on the south coast of Newfoundland. He has served a term as Chairperson of the Economic Development Board for Zone 13 and is presently Chairperson of the South Coast Community Development Corporation as well as the Chairperson of the Provincial Association of CDCs and one of two Newfoundland representatives on the Pan-Canadian Association. Mr. Taylor is currently a member of the Edge Board.

Mr. Taylor was appointed to the Labour Relations Board as an alternate employer representative in January 1998 and was appointed as a regular employer representative in April, 1999.

WILLIAM A. PARSONS, *Employee Representative (Regular)*

William Parsons has over 30 years experience in the labour movement, serving as Vice-President of the Canadian Communications Workers' Union, Organizing Director of Fish, Food and Allied Workers Union and International Representative of the United Steelworkers of America. He is a Past President of the Newfoundland and Labrador Federation of Labour and Past Vice-President of the Canadian Labour Congress, as well as a Board Member of the Advisory Council on the Economy and member of the Labour Relations Working Group Initiative.

Mr. Parsons is currently Executive Director of the Newfoundland and Labrador Building and Construction Trades Council. He was appointed to the Labour Relations Board in 1994 as an alternate employee representative, and was reappointed as a regular employee representative in December 1995, January 1998 and January 2000 for 2-year terms.

DAVID G. WADE, *Employee Representative (Regular)*

David Wade began his career in labour relations 24 years ago. He was elected Business Manager of the Ironworkers Union for Newfoundland and Labrador, Local 764 in 1978. Throughout this time he has been elected by his peers to serve in a number of other capacities: President of the Newfoundland and Labrador Building and Construction Trades Council, Secretary of the Newfoundland and Labrador Oil Development Allied Trades Council and President of the Petroleum Development Association. He has been appointed to the Apprenticeship Board for the Province and twice appointed to the Labour Relations Board. He is a member of the Ironworkers Advisory Committee for the Province and served on the Executive Board of the National Ironworkers Sectoral Adjustment Services Apprenticeship Committee representing Atlantic Canada and Quebec. He is Vice-President of the Ironworkers District Council of Eastern Canada, which includes Quebec. In his work with the International organization, Mr. Wade has served on several committees including the Constitution Committee. In this capacity, he took part in the revision of the Ironworkers' Constitution for North America.

In October, 2000, after serving 23 years with the local in this Province, the General President of the Ironworkers International appointed him General Organizer servicing Atlantic Canada.

BILL ALCOCK, *Employer Representative (Alternate)*

Bill Alcock is the owner of Industrial Relations Management, a consulting firm in the human resources field. A member of the Labour Relations Board since 1974, Mr. Alcock has advised and represented employers in collective bargaining, grievance and arbitration handling since graduating from Memorial University in 1971 (B. Comm).

Mr. Alcock served for 13 years as the Director of Labour Relations for the Newfoundland Construction Labour Relations Association and for six years as part-time Executive Director of the Newfoundland and Labrador Employers' Council.

DAVE CURTIS, *Employee Representative (Alternate)*

Dave Curtis is Past President of the Newfoundland and Labrador Federation of Labour and Past President of the Newfoundland Association of Public Employees. Following thirty years involvement in the labour movement, Mr. Curtis retired from NAPE in 1997. He currently works as a labour relations consultant and serves as an arbitrator for the Canadian Motor Vehicle Arbitration Plan.

Mr. Curtis was appointed to the Labour Relations Board as an alternate employee representative in January 1998 and was reappointed in February 2000 for a 2-year term.

JENESTA HOLLOWAY, *Employee Representative (Alternate)*

Jenesta Holloway is an Education Coordinator for the Central East Health Care Institutions Board and her primary responsibility involves computer training for staff. She served on the Board of Directors of the Newfoundland and Labrador Nurses Union from 1984-1996, in the positions of Regional Vice-President and Provincial Vice-President. She is currently a Review Commissioner for the Workers' Compensation Review Division.

Ms. Holloway was appointed to the Labour Relations Board as an alternate employee representative in January 1998 and was reappointed in February 2000 for a 2-year term.

DIANE JACQUE, *Employee Representative (Alternate)*

Diane Jacque has just moved from Goose Bay, Labrador to St. John's as a dispatcher with Newtel Communications. During her 25 years working in Goose Bay, Diane was involved in numerous union and community activities, including President of Newtel Pioneers for Goose Bay, Volunteer Co-ordinator for the Labrador Winter Games, President of the Ladies Golf Association in Goose Bay and other committees and boards.

Ms. Jacque was appointed to the Labour Relations Board as an alternate employee representative in February 2000 for a 2-year term.

JOHN F. PEDDLE, *Employer Representative (Alternate)*

John F. Peddle is the Executive Director of the Newfoundland and Labrador Health Boards Association, a position he has held since 1995. Prior to this, he was Director of Labour Relations with the Association from 1976. Mr. Peddle has advised Employers, in both the public and private sectors, in collective bargaining and other labour relations and human resource issues for over twenty-five (25) years. Since the formation of the Newfoundland and Labrador Employers' Council, Mr. Peddle has been actively involved with Council both as an Executive member and Director, including a term of office as Chair. He currently chairs the Labour Policy Committee of Council.

Mr. Peddle graduated from Memorial University in 1971 which a B.Comm., majoring in Industrial Relations and Human Resources. He was appointed to the Labour Relations Board as an alternate employer representative in August 2000.

DAVID J. PORTER, *Employer Representative (Alternate)*

David Porter is currently the Vice President of Human Resources for the Iron Ore Company of Canada in Labrador City, Newfoundland. He has worked in the mining and steel industries for a number of years for such companies as Inco, Rio Algom Limited, Lornex Mining Corporation and Atlas Steels. He has served on Boards of Directors of Boart Canada Limited, Bristo Machine Works and Lornex Copper Corporation. He has also served as a member on the British Columbia Labour Relations Board.

Mr. Porter was appointed to the Newfoundland Labour Relations Board as an alternate employer representative in January 1998 and was reappointed in February 2000 for a 2-year term.

MICHAEL J. POWER, *Jurisdictional Umpire*

Michael J. Power has been involved in the labour movement with the International Brotherhood of Electrical Workers (IBEW) since 1977, as President/Business Manager of Local 2351, Churchill Falls. In 1992, he was appointed as an International Representative for the IBEW, the position he still holds today. Mr. Power was a member of the Labour Relations Working Group Initiative of the Advisory Council on the Economy and the Construction Industry Industrial Adjustment Services (IAS) Committee. He is currently a member of the Board of Directors of the Newfoundland and Labrador Construction Safety Association, a position held since its inception.

Mr. Power was first appointed to the Labour Relations Board as an alternate employee representative in December 1995 for a 2-year term. He was appointed as Jurisdictional Umpire with the board in May 2000 for a 2-year term.

RAYMOND REID, *Employee Representative (Alternate)*

Raymond Reid has been a Firefighter with the City of Corner Brook Fire Department for 28 years, and recently retired from that position. He has been involved with the International Association of Firefighters for approximately 26 years, and is past President of Local 1222 of the Firefighters' Association. He is also past President of the Atlantic Provinces Professional Firefighters' Association.

Mr. Reid was appointed to the Labour Relations Board as an alternate employee representative in 1989.

RAYMOND M. RYALL, *Jurisdictional Umpire*

Raymond M. Ryall has been involved in the labour movement for over 30 years, serving in various capacities with the International Union of Bricklayers and Allied Craftsmen, including President and Business Manager of Local #1 and International Representative of the union. Mr. Ryall has also served as President of the Newfoundland and Labrador Building and Construction Trades Council, Vice- President of the Oil Development Council and Chairperson of the Atlantic Provinces Trowel Trades Conference. He recently served as Organizing Co-ordinator for a two-year term with the Newfoundland and Labrador Building and Construction Trades Council. He is currently employed as the Newfoundland and Labrador International Building Trades Petroleum Development Association Site Representative at the Terra Nova Project, Bull Arm, Newfoundland.

Mr. Ryall was appointed to the Labour Relations Board as Jurisdictional Umpire in December 1999 for a 2-year term.

SCOTT WELLS, *Employer Representative (Alternate)*

Scott Wells has been General Manager of Island Roofing Co. Ltd. for the past eighteen years. With an extensive background in construction management, he has also been providing consulting services in the building trades and design-build areas. He is highly involved in the community serving as Mayor of the Town of Cox's Cove for the past eight years and President of the Great Humber Joint Council for the last three years.

Mr. Wells was appointed to the Labour Relations Board as an alternate employer representative in January 1998 and was reappointed in February 2000 for a 2-year term.

■ *CASELOAD*

In 2001, the Board received a total of 163 applications and complaints dealt with a total of 155 applications during the period.

In this portion of the report, we will comment on hearings and representation votes, as well as review the various types of applications processed by the Board during the reporting period under the pieces of legislation administered by the Board.

♦ HEARINGS

The Board sits in panels of three, with the Chairperson or Vice-Chairperson in each case, together with an employee representative and an employer representative. Most hearings take place in St. John's, however, in appropriate cases, the Board holds hearings in the location closest to the workplace. In this reporting period, panels also sat in Corner Brook, Clarenville and Goose Bay.

During the 2001 calendar year, the Board conducted 22 hearings over 112 days. This compares with 28 hearings over 140 days during 2000. The Board has experienced difficulties in the scheduling and postponement of hearing dates in recent years and is continuing its efforts to realize greater efficiencies in this area.

♦ REPRESENTATION VOTES

In 2001, the Board's returning officers conducted a total of 56 representation votes among employees, compared to 34 votes conducted during 2000. Of the votes conducted, 43 involved certification applications, six votes were held in applications for termination of existing bargaining rights, six were held in applications resulting from transfers of business in the health care sector and one vote involved a successorship application in the private sector.

Of the votes, all but the six held involving the health care sector and the successorship application in the private sector, involved a single union on the ballot. A total of 2,889 employees were eligible to vote in the elections that were conducted.

LABOUR RELATIONS ACT

♦ CERTIFICATION OF BARGAINING AGENTS

The Board received 58 applications for certification, carried forward 15 from the previous year and processed 47 certification applications during the year. Where the applicant trade union shows 40% employee support within the proposed bargaining unit, the Labour Relations Act provides that a representation vote be taken. Of the 47 applications processed, 66% achieved certification. 31 applications were granted, 14 were rejected and two were withdrawn.

There were approximately 756 employees affected by certification orders issued by the Board in 2001.

♦ REVOCATION OF CERTIFICATION/ TERMINATION OF BARGAINING RIGHTS

Six applications for revocation of certification were filed with the Board in 2001, one was carried forward from the previous year. Of the total cases processed, six certification orders were revoked and one application was rejected. There were 238 employees affected by the revocation orders of the Board.

♦ UNFAIR LABOUR PRACTICES

In 2001, the Board received seven complaints alleging contravention of the unfair labour practice sections of the Act and carried forward 13 such complaints from the previous year. In complaints against employers, the principal allegations involved interference with the selection of a trade union and alteration of terms and conditions of employment. Where employers complained against unions, allegations involved organizing activities.

Of the six complaints dealt with by the Board, remedial orders were issued in three cases, two were settled/withdrawn and one complaint was rejected.

♦ DUTY OF FAIR REPRESENTATION

Section 130 of the Act deals with complaints alleging failure of a bargaining agent to act in good faith in the handling of a grievance an employee has against the Employer. Seven such applications were received in 2001 and three were carried forward from the previous year. Of the five applications processed, four were rejected and one was withdrawn.

♦ APPLICATIONS UNDER SECTION 18 OF THE ACT

Applications can be made to the Board under Section 18 of the Act for a determination of matters referred to in paragraph 18(k), such as, whether a person is an employer or employee, a person is a member in good standing of a trade union, an organization is a trade union, or a person or organization is a party to or is bound by a collective agreement. There were three such applications received in 2001 and two were carried forward from 2000. Of the four processed by the Board, one was granted and three were settled.

♦ COMMON EMPLOYER

In 2001, the Board carried forward three applications alleging that more than one business was being carried on under common control or direction and requesting that the Board declare the businesses to be one employer for the purposes of the Act. Two of these applications were subsequently withdrawn.

♦ TRANSFER OF OWNERSHIP/SUCCESSORSHIP

In 2001, the Board received one application alleging that there had been a sale, lease, transfer or other disposition of business, and carried six forward from the previous year. Of the two applications processed by the Board, one was granted and one was rejected.

♦ IMPOSITION OF FIRST AGREEMENT

Referrals can be made by the Minister requesting the Board to inquire into a dispute and, if advisable, to settle the terms and conditions for the first collective agreement. Two such applications were received in 2001 and four applications were carried forward from the previous year. The Board decided to settle the terms and conditions for the first collective agreement in one case and is currently hearing evidence on those terms and conditions and the Board imposed a first collective agreement in another case.

♦ RECONSIDERATION OR AMENDMENT OF BOARD DECISIONS

There was one application received during this reporting period to reconsider a previous decision of the Board and two applications to amend existing bargaining units Five applications were carried forward from 2000 and two applications to amend existing bargaining units were remitted to the Board by the Supreme Court. Two reconsideration applications were rejected and two applications to amend an existing unit were granted, one was rejected.

PUBLIC SERVICE COLLECTIVE BARGAINING ACT

There were 62 applications filed under this piece of legislation during 2001. 50 of these applications were requests for essential employee declarations in the health care sector and school boards in the Province. 40 such applications were carried forward from 2000. 48 essential employee declarations were made by the Board in 2001 and one application was withdrawn. There were six applications to amend an essential employee declaration previously made by the Board and the amendments were granted.

One application for certification was received which was granted and affected 12 employees.

There were five applications filed which involve questions arising from transfers of business in the health care sector and three such applications were carried forward from the previous year. In five of these cases, the Board reconfigured the bargaining units and ordered votes of employees to determine which of two bargaining agents will represent the employees.

Eight applications to amend existing bargaining units were carried forward from the previous year. One application was granted and one was withdrawn. Three complaints made by aggrieved employees against their bargaining agent were lapsed in the reporting period.

OCCUPATIONAL HEALTH AND SAFETY ACT

The Board has authority under Section 51 of the Occupational Health and Safety Act to determine whether an employer has taken discriminatory action against a worker for a reason set out in Section 49 of the Act. There was one application received by the Board under the Occupational Health and Safety Act during 2001 and one was carried forward from the previous year. One has been withdrawn and the other is pending.

FISHING INDUSTRY COLLECTIVE BARGAINING ACT

There were two applications for accreditation as bargaining agent received under this piece of legislation in 2001. One was withdrawn and one was rejected by the Board.

TEACHERS' COLLECTIVE BARGAINING ACT

There was one application requesting the Chairperson to appoint a conciliation officer received under this legislation during 2001. The appointment was made.

■ *JUDICIAL REVIEW*

♦ ACTIVITY ON 2001 MATTERS AND PRIOR

The following are summaries of court cases decided in 2001 which reviewed decisions or proceedings of the Board.

1. **Newfoundland & Labrador Regional Council of Carpenters and Allied Workers v. Construction General Labourers, Rock and Tunnel Workers, Local 1208 (2000 T01 2616)**

Facts: Carpenters Union applying to the Board pursuant to section 9.1 of the *Act* for the appointment of a jurisdictional umpire to settle a jurisdictional dispute between two unions. Section 9.1(4) requiring an umpire to consider, *inter alia*, decisions of other adjudicative bodies. Umpire determining that a prior decision of a consensual umpire under a collective agreement not a decision of an "other adjudicative body" within the meaning of section 9.1(4) of the *Act*.

Issue: (1) Appropriate test on review? (2) Whether Umpire committed reversible error in deciding as he did?

Held: Decision of Lang J. rendered January 25, 2001. Application dismissed. The appropriate test on review is that of patently unreasonable. Here the decision of the umpire is entirely reasonable. He did not err in law or otherwise exceed his jurisdiction. Notice of Appeal filed February 26, 2001.

2. **Landon Payne and Sheldon Park v. Construction General Labourers, Rock and Tunnel Workers, Local 1208 (2001 04 T 0010)**

Facts: Defendant union certified as bargaining agent for employees of Trent Construction Ltd. in 1989. In 1999 Board declaring Trent Construction, Brook Enterprises and a third party to be "common employer". Employees of Brook now applying for revocation. Board applying "April Waterproofing principle" holding that persons hired contrary to an existing collective agreement should not be considered employees in the bargaining unit for purposes of a revocation application. Board concluding "that the 1989 Certification Order was restricted to only those employees of Trent, now Brook, working in the industrial and commercial sector of the construction industry" rather than all labourers employed by Brook as of the date of the application.

Issues: (1) Was it patently unreasonable for the Board to conclude that the bargaining unit for which the Defendant was initially certified and for which the Plaintiffs may seek revocation of certification is a unit of employees, comprised of labourers of Brook working in the industrial and commercial sector in the construction industry? (2) Should costs be awarded against the Board due to the late filing of the Board's reasons?

Held: Decision of Leblanc J. rendered May 17, 2001. Application dismissed. Board decision upheld. Board's interpretation not patently unreasonable in the circumstances. (2) Costs awarded against Board due to late filing of reasons.

3. **Memorial University of Newfoundland v. Memorial University of Newfoundland Faculty Association (2001 01T 0242)**

Facts: Board certifying MUNFA for a group of employees of MUN in 1988. Board rejecting an application by MUNFA in 1995 to add "co-operative education co-ordinators (CEC's)" to the unit. MUNFA filing Originating Application for Certiorari but not proceeding. In 2000 MUNFA making further application to add CEC's. Board granting second application.

Issues: (1) Whether Board's authority to vary or review its 1995 order was constrained by a) absence of material change in circumstances b) principles of *res judicata latches* or c) the Board being *functus* as a result of an earlier originating application for judicial review having been filed but not proceeded with? (2) Whether failure to provide MUN full opportunity to respond to issue of the origin of a CEC job description a breach of the rules of natural justice or procedural fairness?

Held: Decision of Hall J. rendered July 6, 2001. (1) As to the doctrine of *latches* it is not applicable in the absence of prejudice and MUN has not demonstrated prejudice. As to the Board being *functus*, the Originating Application for Certiorari filed in 1995 did not operate as a stay of the 1995 CEC order. As to material change in circumstance, s. 19(2) of the Act vests the Board with a "plenary independent power to consider and deal with applications to vary orders previously made by it". Neither the passage of 5 years nor the lack of material change constraining the Board's power to vary the 1995 CEC Order. (2) Failure to provide full opportunity to respond to issue of the origin of a CEC job description, in the circumstances, warranting the Board's decision being quashed. MUNFA's Application being remitted back to the Board.

4. **Bowringer Engineering Ltd. v. International Association of Bridge, Structural and Ornamental Iron Workers, Local 764, et al. (2001 NFCA 57 - Court of Appeal)**

Facts: Union certified as bargaining agent following vote pursuant to s. 47 or the *Act*. Ballots destroyed. Certification order set aside by the Supreme Court of Newfoundland Trial Division on a finding of reasonable apprehension of bias. Matter remitted to new panel of Board. Board finding Bowringer to be employer. Board determining no jurisdiction to hold further vote under s. 47 of the *Act* but finding authority under sections 38 and 46. Trial Division upholding Board.

Issues: 1) Whether Board has jurisdiction to order a second vote in the circumstances? 2) Whether patently unreasonable for Board to include persons not employed by Bowringer at the time of the second vote?

Held: Decision of the Court of Appeal rendered October 30, 2001. Appeal allowed and the order of the Board dated April 8, 1998 quashed. (1) In the circumstances, applying a liberal and purposive reading of ss. 38 and 46, the Board's decision that it could order a second vote cannot be said to be patently unreasonable where the initial certification order had been quashed and the ballots from the original vote destroyed. (2) In the absence of an explanation, and particularly in light of the significant passage of time, it was, on its face, patently unreasonable for the Board to determine the wishes of employees by limiting the vote to those who had been employed more than a year previously.

5. **Association of Allied Health Professionals v. Newfoundland and Labrador Association of Public and Private Employees, et al. (2001 01T 1082)**

Status: Originating application issued April 12, 2001. Notice of Discontinuance filed August 28, 2001.

6. **NAPE v. Her Majesty the Queen in Right of Newfoundland represented herein by Treasury Board on behalf of Social Services and The Hamilton Heights Group Home Board (1994 St. J. No. 239 - Court of Appeal)**

Status: Matter deemed abandoned by Notice dated September 13, 2001.

7. **Provincial Paving Limited v. Construction General Labourers, Rock and Tunnel Workers, Local 1208, et al. (1994 St. J. No. 193 - Court of Appeal)**

Status: Matter deemed abandoned by Notice dated the September 12, 2001.

♦ CASES STILL OUTSTANDING (FILED IN 2001 & PRIOR)

The following applications were still outstanding at the end of the year:

1. **Hibernia Management & Development Company Ltd. v. Communications, Energy and Paperworkers Union of Canada, et al. (2001 01T 2567)**

Facts: Two unions CEP - Local 97 and FFAW applying for certification of a unit of employees on the Hibernia platform. Board dismissing both applications and declining to waive 6 months bar against further application in accordance with Rule 18. CEP reapplying within six months under separate local (Local 60N). Board allowing application and proceeding to take vote. Hibernia bringing application for Certiorari and Interim Injunction to prohibit Board dealing with the application.

Issues on Injunction: (1) Test on injunction - whether prima facie case or serious issue to be tried? (2) Whether Investigating Officer breached rules of natural justice in not seeking input from HMDC with respect to information obtained from Local 97 relating to membership? (3) Whether Board properly constituted where both the chair and vice-chair participated in the decision contrary to strict requirements of the Act? (4) Whether individuals who signed cards in support of application for certification were ineligible for membership in Local 60N by reason of concurrent membership in Local 97? (5) Whether Board's interpretation and application of Rule 18 patently unreasonable in permitting Local 60N application to proceed?

Held: Decision of Chief Justice Green on injunction rendered October 9, 2001. Injunction denied. Where an interlocutory injunction is sought restraining the actions of the Labour Relations Board the threshold test is that of a prima facie case rather than a serious issue to be tried. Applicant failing to make out prima facie case on any of the grounds alleged. Neither did the Applicant establish irreparable harm.

Status of Originating Application: Originating Application heard November 15 and 16, 2001 before Chief Justice Green. Awaiting decision of the Chief Justice.

2. **United Food and Commercial Workers, Local 1252 v. Cabot Call Centre Inc. and/or Special Projects Unit Call Centre Inc., et al. (2001 01T 2567)**

Facts: Union applying for certification as bargaining unit of a unit of employees of respondent employer. Employer filing reply and also unfair labour practice complaint relating to membership drive. Initial representation vote conducted however Union requesting second vote on basis first vote tainted. Board ordering second vote and conducting hearing on issues of certification and unfair labour practice. Board upholding employer unfair labour practice complaint and rejecting certification application on basis that acts of coercion and intimidation rendered membership cards unreliable. Board member dissenting.

Issues: (1) Whether the Board committed reversible error in finding that the conduct complained of amounted to acts of coercion and intimidation within the meaning of s. 28(1) of the Act or were otherwise a breach of section 28(1) and (2) of the Act? (2) Whether the provisions of s. 47 of the Act (mandatory vote) operate to the exclusion of the general discretionary powers under s. 38(2) of the Act?

Status: Argument and submissions concluded June 12, 2001. Awaiting the decision of Chief Justice Green.

3. **Canadian Union of Public Employees v. Civic Centre Corporation et al. (2000 01 T 2839)**

Facts: Board requested to determine the true employer of employees employed at the St. John's Memorial Stadium. Board finding a sale, lease, transfer or other disposition of a business as between the City of St. John's and the Civic Centre Corporation, pursuant to section 93 of the Act.

Issue: (1) Whether Board decision patently unreasonable?

Status: Matter scheduled for February 1, 2001 but adjourned, *sine die*. Reasons outstanding.

4. **Hibernia Management & Development Company Ltd. v. Fish, Food and Allied Workers Union, et al. (2000 01 T 3277)**

Facts: Competing unions, on application for certification, alleging purported employer in breach of section 45 statutory freeze (Labour Relations Act). Section 38.1 of the Act deeming the licensed operator of an offshore petroleum production platform the employer for purposes of an application for certification.

Issue: Whether the licensed operator of an offshore oil production platform is the deemed employer for all purposes of the Act including a section 45 statutory freeze complaint?

Status: Matter adjourned, *sine die*.

■ *CASELOAD STATISTICS*

This report includes the following statistical reports:

Figure 1 Applications for Certification received over 5 year period (Labour Relations Act)

Figure 2 Applications for Certification (No. of employees affected 1993 - 2001)

Figure 3 Comparative 5-year Analysis (1997-2001) Disposition of Applications for Certification and Revocation - Labour Relations Act

Figure 4 Total new applications filed in 2001

Figure 5 Budget Allocations (Estimates & Actuals) 1997 - 2001

Figure 6 Total applications received over 5-year period 1997 - 2001

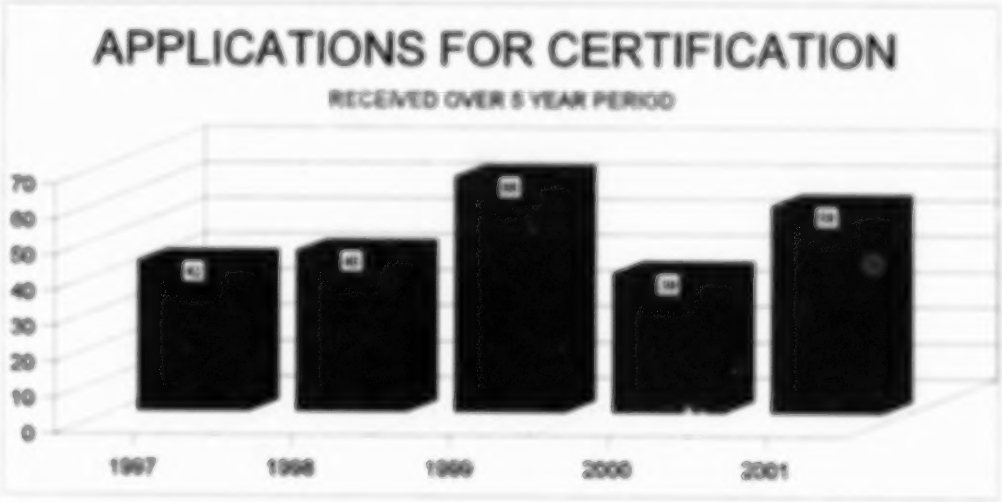

Figure 1

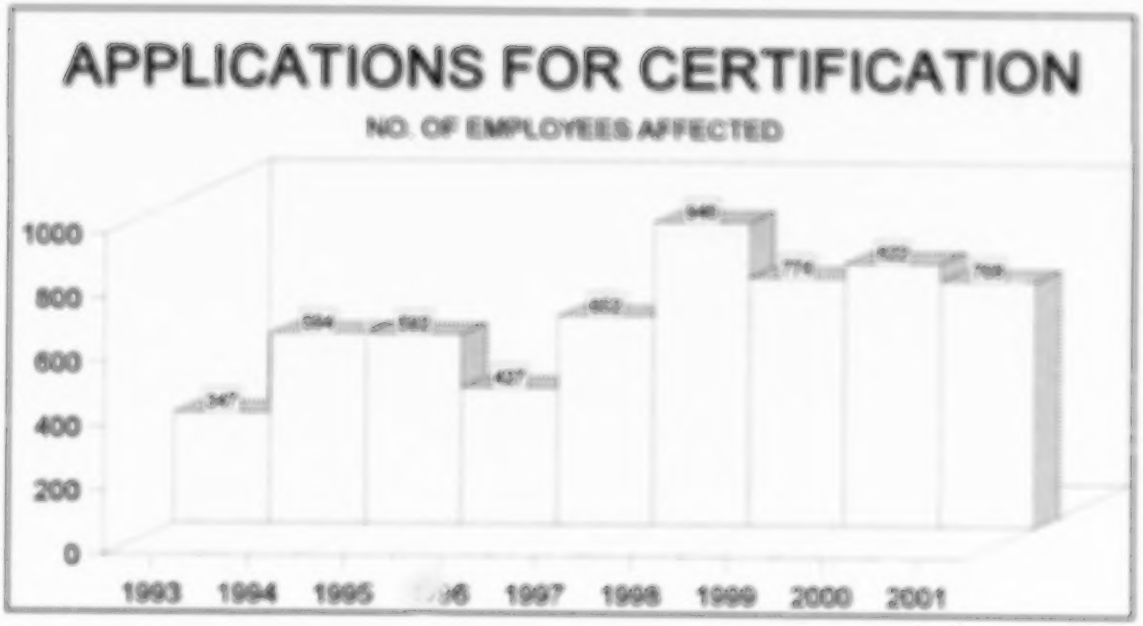

Figure 2 (Note: The figure shown for 1998 includes 439 fishers.)

COMPARATIVE 5-YEAR ANALYSIS (1997-2001)
DISPOSITION OF APPLICATIONS FOR CERTIFICATION AND REVOCATION

Type & Year	Received	Granted	Rejected	Withdrawn	Lapsed
Certification					
1997	42	20	13	5	0
1998	45	24	14	5	1
1999	66	30	21	7	2
2000	39	30	14	1	0
2001	58	31	14	2	0
Revocation					
1997	4	5	1	0	0
1998	7	3	1	1	0
1999	5	1	2	1	0
2000	2	2	2	0	0
2001	6	6	1	0	0

Figure 3

TOTAL NEW APPLICATIONS FILED IN 2001

	2001
Labour Relations Act:	
Applications for Certification	58
Applications for Revocation of Certification	6
Termination of Bargaining Rights	0
Unfair Labour Practices	7
Duty of Fair Representation	7
Imposition of First Agreement	2
Reconsideration of Decision	1
Amendment of Bargaining Unit	2
Transfer of Ownership/Successorship	1
Questions under section 18 of Act	6
Common Employer	0
Referrals by Arbitrators	0
Access to Remote Site	0
Change Name on Certification/Accreditation Order	1
Jurisdictional Dispute (Umpire)	0
Alter terms and conditions of employment	6
Public Service Collective Bargaining Act	62
Fishing Industry Collective Bargaining Act	2
Occupational Health and Safety Act	1
Teachers' Collective Bargaining Act	1
TOTAL APPLICATIONS	163

Figure 4

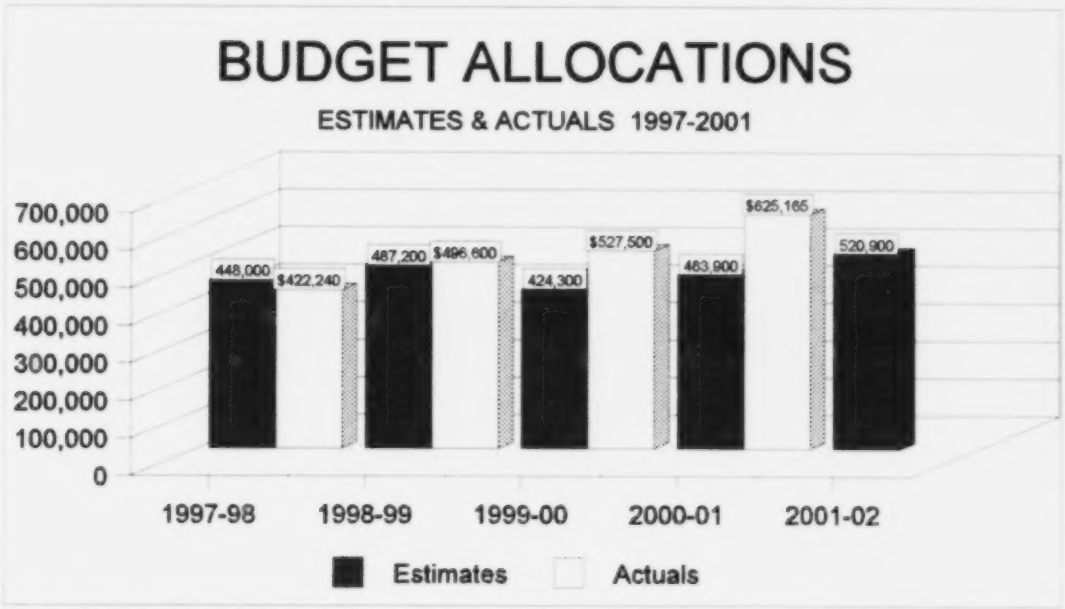

Figure 5 Note: Actual figures for 2001-02 fiscal year are not yet available.

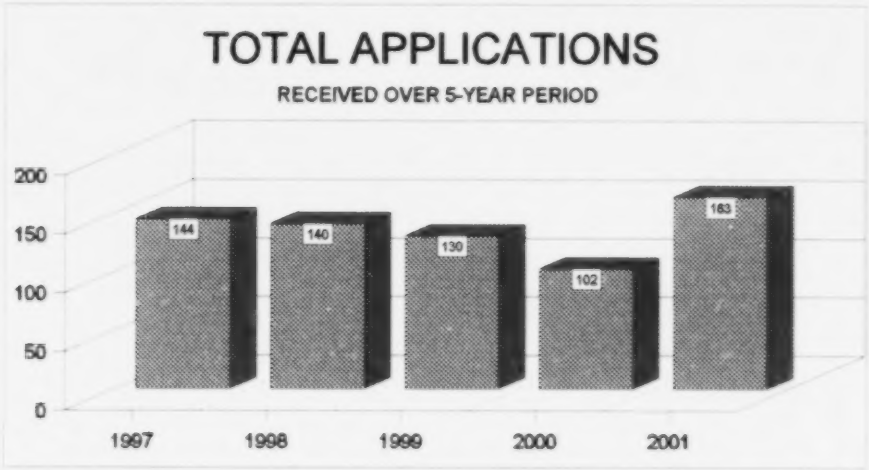

Figure 6

■ *REASONS FOR DECISION*

♦ **Section 36 of the Labour Relations Act**
Applications for Certification

1. United Food and Commercial Workers, Local 1252 and The Congregation of the Sisters of the Presentation dated 7 February, 2001. (712:2820)

2. Fish, Food and Allied Workers Union (FFAW/CAW) and Communications, Energy and Paperworkers Union of Canada, Local 97 and Hibernia Management and Development Company Ltd. dated 30 March, 2001. (712:2784; 712:2788)

3. Communications, Energy and Paperworkers Union of Canada, Local 60N and Hibernia Management and Development Company Ltd. and Fish, Food and Allied Workers Union (FFAW/CAW) dated 11 July, 2001. (2228) Preliminary Ruling.

4. Retail Wholesale Canada, CAW Division, Local 597 and IBEW, Local 2330 dated 30 August, 2001. (2112)

5. United Brotherhood of Carpenters and Joiners of America, Local 579 and Allied Constructors Inc. dated 4 September, 2001. (712:2786)

6. United Brotherhood of Carpenters and Joiners of America, Local 579 and 2001 Investments Ltd. dated 11 October, 2001. (2108)

7. Communications, Energy and Paperworkers Union of Canada, Local 60N and Hibernia Management and Development Company Ltd. and Fish, Food and Allied Workers Union (FFAW/CAW) dated 12 October, 2001. (2228)

♦ **Section 51 of the Labour Relations Act**
Applications for Revocation of Certification

8. Landon Payne, Sheldon Park, et al. and Construction General Labourers, Rock and Tunnel Workers, Local 1208 and Brook Enterprises Inc. dated 10 April, 2001. (716:373)

♦ **Section 122 of the Labour Relations Act**
Unfair labour practice complaints

9. Fish, Food and Allied Workers Union (FFAW/CAW) and Communications, Energy and Paperworkers Union of Canada, Local 97 and Hibernia Management and Development Company Ltd. dated 4 December, 2001. (118:508 & 118:510)

- **Section 18 of the Labour Relations Act**
  Whether an organization is a trade union

10. Hibernia Management and Development Company Ltd. and Communications, Energy and Paperworkers Union of Canada and Communications, Energy and Paperworkers Union of Canada, Local 60N and Fish, Food and Allied Workers Union (FFAW/CAW) dated 11 July, 2001. (2207)

- **Section 130 of the Labour Relations Act**
  Duty of Fair Representation

11. Gordon H. Brown and Fish. Food and Allied Workers Union and Beothic Fish Processors Limited dated 15 October, 2001. (126:113)

- **Section 19 of the Labour Relations Act**
  Amendment of bargaining unit

12. Memorial University of Newfoundland Faculty Association and Memorial University of Newfoundland dated 10 January, 2001. (548:443)

- **Section 44 of the Public Service Collective Bargaining Act**
  Questions arising from transfer of business

13. Newfoundland and Labrador Association of Public and Private Employees and St. John's Regional Health and Community Services Board and Association of Allied Health Professionals dated 15 August, 2001. (1039:50)

- **Section 10 of the Public Service Collective Bargaining Act**
  Designation of Essential Employees

14. Avalon East School Board and Canadian Union of Public Employees, Local 1560 dated 30 August, 2001. (1020:273)
    Dissent of Board member, St. Aubin, dated 30 August, 2001.
    Addendum to Reasons for Decision dated 6 September, 2001.

BARGAINING UNITS

APPLICATIONS FOR CERTIFICATION GRANTED IN 2001

1. International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 764 and KCM Construction.

   Bargaining Unit

   A unit of employees of KCM Construction comprising Ironworkers.

2. United Brotherhood of Carpenters and Joiners of America, Millwright Local 1009 and KCM Construction.

   Bargaining Unit

   A unit of employees of KCM Construction comprising Millwrights, Millwright Apprentices and Working Millwright Foremen.

3. United Brotherhood of Carpenters and Joiners of America, Local 579 and KCM Construction.

   Bargaining Unit

   A unit of employees of KCM Construction comprising Carpenters, Carpenter Apprentices and Working Carpenter Foremen.

4. Transport and Allied Workers Union, Local 855, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Colonial Garage and Distributors Limited.

   Bargaining Unit

   A unit of employees of Colonial Garage and Distributors Limited comprising all employees employed by Colonial Garage and Distributors Limited (Corner Brook Branch) save and except Manager, Office Staff, Sales Staff, Non-working Foremen and those above the rank of Non-working Foreman.

5. United Brotherhood of Carpenters and Joiners of America, Local 579 and Gilmour Installations.

   Bargaining Unit

   A unit of employees of Gilmour Installations comprising Carpenters, Carpenter Apprentices and Working Carpenter Foremen.

6. United Brotherhood of Carpenters and Joiners of America, Local 579 and Hussey Seating Company.

Bargaining Unit

A unit of employees of Hussey Seating Company comprising Carpenters, Carpenter Apprentices and Working Carpenter Foremen.

7. Newfoundland and Labrador Association of Public and Private Employees and Embree Town Council.

Bargaining Unit

A unit of employees of Embree Town Council comprising all employees save and except Town Clerk.

8. United Food and Commercial Workers, Local 1252 and Sea Crest Corporation of Canada Ltd.

Bargaining Unit

A unit of employees of Sea Crest Corporation of Canada Ltd. comprising all employees working at its seafood processing plant in Carbonear save and except Manager, Office Staff, Production Manager, Facilities Manager, Working Supervisor, Working Chief Engineer, Watchman, Collecting Agents and those above the rank of Working Supervisor.

9. Construction General Labourers, Rock and Tunnel Workers, Local 1208 and KCM Construction.

Bargaining Unit

A unit of employees of KCM Construction comprising Labourers.

10. Newfoundland and Labrador Association of Public and Private Employees and MUN Club, operated by MUN Club Board.

Bargaining Unit

A unit of employees of MUN Club, operated by MUN Club Board, comprising all employees save and except Manager.

11. United Brotherhood of Carpenters and Joiners of America, Millwright Local 1009 and Alstom Power Inc.

Bargaining Unit

A unit of employees of Alstom Power Inc. comprising Millwrights.

12. International Union of Operating Engineers, Local 904 and KCM Construction.

Bargaining Unit

A unit of employees of KCM Construction comprising Operators.

13. Retail Wholesale Canada, CAW Division, Local 597 and Atlantic Shopping Centres Limited.

Bargaining Unit

A unit of employees of Atlantic Shopping Centres Limited comprising all employees save and except Mall Manager, Assistant Manager, Maintenance Manager, Merchandising Assistant, Office and Clerical Staff, Non-working Supervisors and those above the rank of Non-working Supervisor.

14. Transport and Allied Workers Union, Local 855, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Epoch Rock Inc.

Bargaining Unit

A unit of employees of Epoch Rock Inc. comprising all employees employed at Argentia, Newfoundland save and except President, Vice President Sales and Marketing, Comptroller, Chief Financial Officer, Human Resources Manager, Technical Director, Office Staff, Sales Staff, Non-working Supervisors and those above the rank of Non-working Supervisor.

15. Construction General Labourers, Rock and Tunnel Workers, Local 1208 and Steeplejack Services (a division of 353903 Ontario Ltd.) and United Brotherhood of Carpenters and Joiners of America, Local 579.

Bargaining Unit

A unit of employees of Steeplejack Services (a division of 353903 Ontario Ltd.) comprising all Labourers employed in the Industrial and Commercial Division of the Construction Industry.

16. Transport and Allied Workers Union, Local 855, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and S.W. Moores Memorial Stadium.

Bargaining Unit

A unit of employees of S.W. Moores Memorial Stadium comprising all employees save and except Manager, Non-working Foremen and those above the rank of Non-working Foreman.

17. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 740 and Fearn's Boiler and Dry Kiln Services (1998) Limited.

Bargaining Unit

A unit of employees of Fearn's Boiler and Dry Kiln Services (1998) Limited comprising Plumbers, Pipefitters and Welders employed in the Industrial and Commercial Division of the Construction Industry.

18. United Brotherhood of Carpenters and Joiners of America, Millwright Local 1009 and P. J. Cote Limited.

Bargaining Unit

A unit of employees of P. J. Cote Limited comprising all Millwrights and Millwright Apprentices.

19. International Union of Bricklayers and Allied Craftworkers, Local #1 and Guild Contracting Specialties (2000) Inc.

Bargaining Unit

A unit of employees of Guild Contracting Specialties (2000) Inc. comprising all Masons and Mason Helpers employed within the Industrial and Commercial Division of the Construction Industry.

20. International Union of Operating Engineers, Local 904 and Marine Contractors Inc.

Bargaining Unit

A unit of employees of Marine Contractors Inc. comprising all Heavy Equipment Operators, Mechanics, Welders and Truck Drivers.

21. United Steelworkers of America, Local 6480 and Family Crisis Shelter.

Bargaining Unit

A unit of employees of Family Crisis Shelter comprising all employees employed in Labrador City, Newfoundland, save and except Administrator and Office Staff.

22. International Union of Operating Engineers, Local 904 and General Steam Cleaning Inc.

Bargaining Unit

A unit of employees of General Steam Cleaning Inc. comprising all Heavy Equipment Operators, Operators, Mechanics and Welders.

23. Transport and Allied Workers Union, Local 855, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Chester Dawe Ltd.

Bargaining Unit

A unit of employees of Chester Dawe Ltd. comprising all employees working as Cashiers and Switchboard Operators at the Employer's 60 O'Leary Avenue location, save and except Warehouse Employees, Non-commission Sales, Commission Sales, Office Staff, Fencing, Managers, Supervisors and those above the rank of Supervisor.

24. Newfoundland and Labrador Association of Public and Private Employees and United Food and Commercial Workers, Local 1252.

Bargaining Unit

A unit of employees of United Food and Commercial Workers, Local 1252 comprising all employees save and except President and Secretary/Treasurer.

25. Communications, Energy and Paperworkers Union of Canada, Local 60N and Hibernia Management and Development Company Ltd. and Fish, Food and Allied Workers Union (FFAW/CAW).

Bargaining Unit

A unit of employees of Hibernia Management and Development Company Ltd. comprising all employees employed on the platform except those employees the Board determines are employed in construction and start-up on the platform.

26. United Brotherhood of Carpenters and Joiners of America, Local 579 and Melendy Construction Limited.

Bargaining Unit

A unit of employees of Melendy Construction Limited comprising all Carpenters, Carpenter Apprentices and Working Carpenter Foremen employed by the Employer within the Industrial and Commercial Division of the Construction Industry.

27. United Brotherhood of Carpenters and Joiners of America, Local 579 and 2001 Investments Limited.

Bargaining Unit

A unit of employees of 2001 Investments Limited comprising all employees employed at the vinyl window manufacturing facility in Mount Pearl, NF save and except Office Staff, Plant Manager, Sales Persons, Non-working Foremen and those above the rank of Non-working Foreman.

28. International Union of Operating Engineers, Local 904 and Oceanex (1997) Inc.

Bargaining Unit

A unit of employees of Oceanex (1997) Inc. comprising all employees employed as Dock Workers/Warehouse Workers employed at/by the Oceanex (1997) Inc. LTL, Warehouse Distribution Centre located in Mount Pearl, Newfoundland, save and except Manager, Office Personnel, Dispatchers, Non-working Supervisors and those above the rank of Non-working Supervisor.

29. Transport and Allied Workers Union, Local 855, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Newfoundland Kubota Ltd.

Bargaining Unit

A unit of employees of Newfoundland Kubota Ltd. comprising all employees of Newfoundland Kubota Ltd. located at 1085 Topsail Road, St. John's, Newfoundland, save and except Business Manager, Office Staff, Salespersons, Non-working Foremen and those above the rank of Non-working Foreman.

30. International Union of Painters and Allied Trades, Local 1984 and Specialty Seal Limited.

Bargaining Unit

A unit of employees of Specialty Seal Limited comprising all employees save and except Office Manager, Office Staff, Production Manager, Non-working Foremen and those above the rank of Non-working Foreman.

31. Newfoundland and Labrador Association of Public and Private Employees and Bay St. George Youth Assessment Centre.

Bargaining Unit

A unit of employees of Bay St. George Youth Assessment Centre save and except Co-ordinator and Assistant Co-ordinator.